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## INFORMATION PAPER

MCJA-OSC  
20 February 2014

SUBJECT: Legal Services During the Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) Processes

1. Purpose: To describe legal services available to Soldiers in the Army Physical Disability Evaluation System (APDES).

2. Facts:

a. Soldiers' Medical Evaluation Board Counsel (SMEBC) and Soldiers' Physical Evaluation Board Counsel (SPEBC) are available free of charge to assist and represent Soldiers throughout both the MEB and PEB processes. The Office of Soldiers' Counsel (OSC) is an agency independent from the MEB and PEB decision making authorities. The OSC's duty is to represent individual Soldiers and does not represent the Command, the MEB, the PEB or the Army.

b. A Soldier or retiree going through disability processing may also hire counsel of their own choosing or may have someone from a Veterans' Service Organization (VSO) represent them. The government will not pay for either counsel of choice or VSO representation.

3. Who we represent: Soldiers who have been actively referred and pending disability processing are priority clients. We also represent retirees who have been placed on the Temporary Disability Retirement List (TDRL) and are being re-evaluated. Soldiers with general questions or concerns about the APDES process will receive assistance on a space available basis.

4. When to seek legal advice: A Soldier should seek legal advice as soon as they have been referred for MEB disability processing. The Soldier must determine their ultimate goal in the APDES process – some will want to end their military service by being found "Unfit for duty" because of their medical conditions, while others will want to be found "Fit for duty" and return to military duty. The SMEBC can help the Soldier understand the process and formulate strategies to help achieve their ultimate goal.

5. Phases of Representation: Once the MEB process is commenced, the Soldier will attend a mandatory briefing held by the SMEBC to learn what services the OSC provides. Under current guidance, Soldiers should receive a legal briefing before they complete their Veterans Administration (VA) claims form 21-0819.

a. Pre-Narrative Summary (NARSUM)/Pre DA Form 3947: This phase of the APDES process focuses on gathering information regarding the Soldier's medical condition(s) and whether those conditions meet or fail medical retention standards

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under Army Regulation (AR) 40-501. During this phase the Soldier will work with their medical providers and the chain of command to ensure the most accurate assessment is made for all the Soldier's medical conditions including the impact, if any, on the ability to execute basic functional Soldier skills and any MOS-specific duties for each medical condition. Again, it is important to meet with a SMEBC before completion of the APDES claims form to make sure the case is developed to meet a Soldier's desired outcome.

b. Completion of MEB Proceedings: After the MEB has recorded their findings on a DA Form 3947 and Narrative Summary (NARSUM), SMEBCs are available to review and explain the MEB's findings and, if necessary, advocate on the Soldier's behalf for possible changes to the DA Form 3947 or the NARSUM. This crucial phase allows the Soldier an opportunity to ensure that all medical conditions are properly reflected in the NARSUM and on the DA 3947 and, if not, to rebut those documents. All medical conditions must be properly identified and analyzed with a decision made as to whether the condition(s) either meet or fall below Army medical retention standards IAW AR 40-501.

c. Ratings: Cases referred to the PEB by the MEB are informally adjudicated by the PEB. The PEB considers the Soldier's DA Form 3947, NARSUM, and the VA Compensation and Pension (C&P) examination. In addition, the PEB will review the Commander's statement (the PEB relies heavily on any performance data provided by the Soldier's immediate commander), physical profiles, recent APFTs, and other performance and personnel documents. The PEB determines fit or unfit for each condition which the MEB has determined to not meet medical retention standards.

(1). Soldiers are found fit when they can reasonably perform the duties of their grade and military occupational specialty (or branch for officers) and be returned to duty.

(2). Medical conditions determined to be "unfitting" (that is, those conditions that prevent the Soldier from performing PMOS duties and/or basic Soldier skills) are sent to the VA for a rating. While the VA will provide a rating for all service connected medical conditions identified during the C&P Exam, the PEB will only adopt the VA ratings for any conditions determined unfitting by the PEB. The combined VA ratings for unfitting conditions will determine the appropriate military disposition for compensable conditions, either separation with disability severance or military disability retirement.

(a). *Permanent retirement*: Permanent disability retirement (PDR) occurs if the Soldier is found unfit, the disability is determined to be permanent and stable and rated at a minimum of 30%, or the Soldier has 20 years of active duty service as computed under 10 USC 1208. (For Reserve Component Soldiers, this means at least 7200 total points.)

(b). *Temporary retirement*: Placement on the TDRL occurs if the Soldier is found unfit and entitled to a combined disability retirement over 30% except that the disability is not considered stable for rating purposes. Also, Soldiers with unfitting conditions rated at less than 30% and who have over 20 years of active duty service

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can also be placed on the TDRL if at least one of the unfitting conditions is not stable for rating purposes. "Stable for rating purposes" refers to whether the condition will change within the next five years so as to warrant a different disability rating. However, stability does not include potential latent impairment -- what might happen in the future. For example, 10 years from now the condition may result in amputation.

(c). *Separation with severance pay*: Separation with disability severance pay occurs if the Soldier is found unfit, has less than 20 years of service as computed under 10 USC 1208, and has a disability rating of less than 30%.

(3). The PEB's informal findings are documented on a DA Form 199 and provided to the Soldier. A SMEBC is available to go over the DA Form 199 and VA ratings with the Soldier. Depending upon the client's goals, the SMEBC will advise if the Soldier's ultimate goal is best achieved by accepting the findings, filing a one-time VA Rating Reconsideration (VARR) for the unfit conditions, filing a request for an informal PEB reconsideration regarding which conditions are fitting or unfitting, and/or whether to request a Formal PEB hearing.

d. Representation at the Formal PEB hearing: SPEBCs provide legal representation to the Soldier starting at the Formal Board phase. SPEBCs work with the Soldier's SMEBC and the Soldier to develop a strategy to meet the Soldier's goal at a Formal Hearing. SPEBCs will represent the Soldier at the Formal Board hearing and help the Soldier prepare their case and present evidence to the Formal Board. They also assist with any appropriate post-PEB appeals.

e. Appeals to the Physical Disability Agency:

(1). The Soldier may appeal the PEB's formal findings. The Soldier's SPEBC will help determine whether an appeal might be effective, identify the best grounds for appeal, assist in gathering relevant evidence and prepare a written appeal. Appeals submitted within ten days are reviewed by the PEB that heard the case.

(2). If the PEB does not change its decision upon appeal, then it will forward the appeal to the Army Physical Disability Agency (PDA) for review. The PDA will review the appeal and may:

(a). Disagree with the PEB's decision and modify it, or return the case to the PEB for further action, or

(b). Agree with the PEB's decision and approve it.

f. Following approval by the PDA, a Soldier determined unfit will be processed for separation or retirement and a Soldier determined fit will be returned to duty. Depending on individual circumstances, an unfit Soldier may be eligible to apply for a Continuation on Active Duty (COAD) or a Continuation on Active Reserves (COAR). While this action is processed through the Physical Evaluation Board Liaison Officer

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(PEBLO), the SPEBC may assist in drafting the written application and/or ensuring completeness of documentation prior to submission.

6. This Information Paper is provided as a service to Soldiers in the MEB/PEB process and is intended as general information only. Soldiers' Counsel is available to provide specific legal advice to Soldiers involved in the MEB/PEB process. Contact your local Office of Soldiers' Counsel for more information. If you do not know how to reach your local OSC office please contact your PEBLO or see our website for contact information at <https://www.jagcnet.army.mil/otjagosc>.

Approved by: Ms. Joyce A. Hamel

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